UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

CASE NO.:

OPTIONS UNLIMITED RESEARCH CORP.
d/b/a Savvysoft,

          Plaintiff,

v.

WESTERN & SOUTHERN FINANCIAL
GROUP, INC.,

          Defendant.

COMPLAINT

Plaintiff OPTIONS UNLIMITED RESEARCH CORP. d/b/a Savvysoft by and through

its undersigned counsel, brings this Complaint against Defendant WESTERN & SOUTHERN

FINANCIAL GROUP, INC. (Western & Southern) for damages and injunctive relief, and in

support thereof states as follows:

SUMMARY OF THE ACTION

1.   This is an action arising under the Copyright Act, 17 U.S.C. § 501; the Economic

Espionage Act of 1996 as amended by the Defend Trade Secrets Act of 2016, 18 U.S.C. §

1836(b); Ohio law prohibiting the misappropriation of trade secrets; and breach of contract in

violation of New York law.

2.   This action arises from defendant Western & Southern's misappropriation and use

of plaintiff's trade secret and copyright protected software thereby violating the parties'

agreement for the limited licensing of that software.

3.   Savvysoft alleges that Western & Southern copied Savvysoft's copyrighted software to advertise, market and promote its business activities. Western & Southern committed the violations alleged in connection with Western & Southern's business for purposes of advertising, product pricing, promoting and selling to the public of insurance and annuities in the course and scope of the Western & Southern's business.

JURISDICTION AND VENUE

4.   This Court has subject matter jurisdiction over these claims pursuant to 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331, 1338(a), and 1367.

5.   Defendant is subject to personal jurisdiction in Ohio.

6.   Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and 1400(a) because the events giving rise to the claims occurred in this district, Defendant engaged in infringement in this district, Defendant resides in this district, and Defendant is subject to personal jurisdiction in this district.

FACTS COMMON TO ALL COUNTS

7.   Plaintiff Options Unlimited Research Corp. is a New York corporation with its principal place of business in New York, New York that does business as Savvysoft, maintains a website at www.Savvysoft.com, and is referred to herein as Savvysoft.

8.   Defendant Western & Southern Financial Group, Inc. ("Western & Southern") is an Ohio Corporation, with its principal place of business at 400 Broadway, Cincinnati, OH 45202.

9.   Savvysoft is the premier provider of derivatives software products for the institutional market. The company makes the market's fastest, most precise and flexible suite of derivatives modeling software, hedge accounting systems, and risk management systems.

SRIPLAW
CALIFORNIA ♦ GEORGIA ♦ FLORIDA ♦ TENNESSEE ♦ NEW YORK

10.   Savvysoft was founded by Richard Tannenbaum, the former head of Bankers

Trust Derivatives Research (now Deutsche Bank). An accomplished software developer, Mr.

Tannenbaum has devoted his professional career to creating cutting edge software used by global

banks, regional banks, trading houses, corporate treasuries, auditors, consultants, insurance

companies, money managers, energy companies and hedge funds.

11.   Among Savvysoft's products is TurboExcel, a software product that Savvysoft

also markets for use on the internet as Calc4Web. TurboExcel, also referred to herein as the

Work, was written and coded in C++ entirely by Mr. Tannenbaum, and registered with the

Register of Copyrights on March 8, 2021 and assigned registration number TX 8-941-523. A true

and correct copy of the registration certificate for TurboExcel is attached hereto as Exhibit 1.

12.   TurboExcel is a compilation and software program that derives independent

economic value, actual or potential, from not being generally known to, and not being readily

ascertainable by proper means by, other persons who can obtain economic value from its

disclosure or use.

13.   TurboExcel is the subject of efforts that are reasonable under the circumstances to

maintain its secrecy, including the use of licensing agreements and the distribution of compiled

code only.

14.   After Savvysoft's programmers coded TurboExcel in C++, Savvysoft compiled

the original code into executable files for distribution that obscured and protected the

TurboExcel code from disclosure.

15.   At all relevant times, the license agreement that accompanied TurboExcel

provided, among other things, that Savvysoft retained the copyright, title and ownership of the

software and all related written materials; that the user acknowledged that the software and

SRIPLAW
CALIFORNIA ♦ GEORGIA ♦ FLORIDA ♦ TENNESSEE ♦ NEW YORK

documentation, the object code for this software, the visual expressions, screen formats, report formats and other design features of this software, all ideas, methods, algorithms, formulae and concepts used in developing and/or incorporated into this software or documentation, all derivative works based upon any of the foregoing, and all copies of the forgoing are trade secrets and proprietary property of Savvysoft, having great commercial value to Savvysoft; and that the user acknowledged that the restrictions in the agreement were reasonable and necessary to protect Savvysoft's legitimate business interests.

16.   The license agreement for TurboExcel also restricted copying to backup purposes only and prohibited the distribution of the software or accompanying written materials to others. The license agreement prohibited the transfer of the software to another person and required the removal of all copies of the software on one computer if transferred to another computer.

17.   The license agreement for TurboExcel prohibited any attempt to unlock or bypass any copy protection utilized with the software; it provided that the user may not remove, erase or modify any copyright notice, or other proprietary notice printed, stamped on, affixed to, or encoded or recorded within this software; it prohibited reverse engineering, disassembly or decompiling of the software; the license agreement prohibited the user from transfer, assign, rent, lease, sell or otherwise dispose of the software on a temporary basis.

18.   TurboExcel automatically converts mathematical calculations to C++ code allowing users of Microsoft's ubiquitous and powerful Excel spreadsheet software program to create a mathematical C++ subroutine from spreadsheets quickly, simply and easily. TurboExcel turns Excel into an autonomous C++ coder, dramatically boosting productivity and efficiency and drastically shortening project completion times saving thousands of man-hours of programming time and hundreds of thousands of dollars in programmer costs.

SRIPLAW
CALIFORNIA ♦ GEORGIA ♦ FLORIDA ♦ TENNESSEE ♦ NEW YORK

19.   Not surprisingly, TurboExcel has been extremely popular in the financial services industries. These businesses, including banks, investment firms, and insurance companies, rely heavily on customized Excel spreadsheets, to make underwriting decisions, often based on actuarial information. The Excel spreadsheets financial services firms like insurance companies utilize contain highly sensitive and confidential algorithms that had been used within those firms for years or even decades. Many of those algorithms are little changed from the days before spreadsheets or date back to early versions of Lotus123, the first commercial spreadsheet program. These algorithms are closely guarded, critical to insurance company decision making, and unlikely ever to be abandoned. The insurance company runs a large risk if their algorithms are exposed to others and have a strong need to keep them confidential.

20.   The strong attachment insurance firms have with their algorithmic underwriting and actuarial processes poses a significant problem to an insurance company looking to scale its offerings to large numbers of potential policy holders. When a single trained underwriter for a specific line of insurance must give individual attention to each underwriting decision and for each decision plug a new potential insured's variables into the company's standard spreadsheet containing highly confidential and sensitive algorithms, how do you scale that underwriting process?

21.   The answer is, you can't, not easily or cheaply. Trained underwriters and actuaries are hard to find and expensive to hire. They have years of training and many professional designations. Insurance is one of the most if not the most highly regulated industry in the U.S. Many levels of oversight for the underwriting process is required. Frequent government reporting is the norm. Conservative approaches are required for every aspect of the business. Simply hiring more actuaries and underwriters to run more computations in more

spreadsheets to underwrite more policies will not work. It is a big human resources problem, and a big company risk.

22.   That was exactly the problem faced by Western & Southern, one of Ohio's largest private companies, in the early 2000s. The company experienced a surge of growth in the 1990s, acquiring insurance companies, diversifying into real estate and investment management and other financial services. Today the 4,000-employee company has $67.5 billion in assets owned or managed, more than 10 times its $6 billion total in 1990. Furthermore, its sales team of insurance agents paid by commission currently numbers over 82,000 across the United States.

23.   Much of Western & Southern's growth came from sales of annuities and insurance products that require decisions made with the assistance of complex underwriting calculations using customer variables fed into Excel spreadsheets. Western & Southern currently offers at least four different types of annuities and numerous types of life and disability insurance. Quoting premiums and returns for these diverse products requires making complex calculations based upon variables received from potential insureds and purchasers like age, weight, smoking status, state, policy amount, and other different criteria that will vary from customer to customer.

24.   Western & Southern needed a technology solution that would automate the process of providing accurate quotations, as well as allow the creation of illustrative reports demonstrating scenarios of prospective account growth over the years for building wealth for retirement. The insurance premium price quotes, as well as any related reports, were based upon their underwriting criteria coded in their proprietary spreadsheets. Western & Southern needed to procure this solution without giving up control of those spreadsheets or hiring more underwriters and actuaries. They also needed to keep the formulas and data tables in those

SRIPLAW
CALIFORNIA ♦ GEORGIA ♦ FLORIDA ♦ TENNESSEE ♦ NEW YORK

spreadsheets confidential. Lucky for Western & Southern, the company discovered Savvysoft's

TurboExcel solution. TurboExcel permitted Western & Southern to take the complex

calculations in the spreadsheets used by underwriters and actuaries at the company, and turn

those spreadsheets into operating software that could easily be used by field agents by simply

plugging in customer variables to obtain instant accurate quotes based upon the same

underwriting criteria used in the home office. And because that operating software was

compiled into object code, whoever had access to this software would not be able to learn the

algorithms hidden inside. Further, the conversion of the spreadsheets to operating software took

minutes instead of months, allowing Western & Southern to keep the prices it charged for its

products up-to-date and accurate; not too low to offer insurance without proper compensation for

the risk, and not too high to lose sales to competitors.

25.   In 2005, Western & Southern, through Tom Sheehan, requested prices for a single

user Professional license of TurboExcel. Mr. Tannenbaum sent a license agreement for the

TurboExcel product to Western & Southern for review by the company's legal department.

Thereafter, Western & Southern purchased a single (1) user Professional license of TurboExcel.

During installation, Western & Southern also clicked-thru on the license agreement,

acknowledging acceptance of the agreement. A true and correct copy of the Software License

and Limited Warranty agreement for TurboExcel is attached hereto as Exhibit 2.

26.   Immediately before the license purchase, Mr. Tannenbaum explained to

representatives at Western & Southern that **a single user Professional license only covered a**

single spreadsheet developer on a single computer, and that **each additional spreadsheet**

developer whose spreadsheets would be converted required an additional license. While the

single user Professional license purchased was perpetual, it was still limited to use by one

spreadsheet developer on the same computer used to create the spreadsheet.

27.   Mr. Tannenbaum explained the limitations of purchasing just a single

Professional user license to Tom Sheehan of Western & Southern in 2005 before the company

agreed to purchase TurboExcel. Mr. Tannenbaum explained the other license options available to

Western & Southern such as a Server Edition license or more copies of a Professional license,

both of which would have provided Western & Southern with more flexibility to configure

TurboExcel for use in converting spreadsheets created on multiple machines by different creators

for distribution across a computer network. The cost of a license increased from $3000 for use on

a single machine to convert spreadsheets created by a single developer, to $10,000 for use on

five machines, to $20,000 for a server edition.

28.   Notwithstanding the limitations of the single user Professional license, and

despite the obvious advantage to Western & Southern that all of its underwriters and actuaries in

all lines of insurance and annuities would have the ability to create executable software for

quoting products by its 82,000 agents, **the company chose to purchase only a single license for**

TurboExcel covering just one spreadsheet creator using one computer for $3,000.

29.   Western & Southern implemented TurboExcel to create a new and improved

quoting solution for their agents that they called their "Quote System". The company

immediately found the product provided them with tremendous advantages and improvements in

their business processes. In a note to Mr. Tannenbaum sent on March 21, 2005, Mr. Sheehan of

Western & Southern noted that "[s]peed is a critical factor in the adoption of our automated

application solution and TurboExcel is key in improving the speed." Mr. Sheehan also added, on

behalf of Western & Southern's management, that they "frequently demo our solutions for others

SRIPLAW

CALIFORNIA ♦ GEORGIA ♦ FLORIDA ♦ TENNESSEE ♦ NEW YORK

and we would like to tell other companies about how important the TurboExcel tool is to our solution."

30.   Western & Southern's continued use of its single TurboExcel license to generate the files for its Quote System on a single machine using spreadsheet files created by a single user required no further payments to Savvysoft, as the license was perpetual, but it did require an annual update to the software's license key to continue to be able to convert new or updated spreadsheets to object code. So once per year, Savvysoft sent Western & Southern a new license key to allow new or updated spreadsheets that their single user created on his or her single computer to be converted using TurboExcel. This continued each and every year from 2006 through 2018.

31.   In early 2018, Savvysoft's Mr. Tannenbaum was contacted by a new employee from the Western & Southern IT department inquiring about TurboExcel. This was unusual because Mr. Tannenbaum's previous interactions with Western & Southern were with someone he believed to be an actuary requesting help in modifying the spreadsheets. Mr. Tannenbaum asked about Western & Southern's current use of the TurboExcel product, and was told that the TurboExcel product was set up on a central computer that was being used by a member of the IT department to convert spreadsheets created by numerous different actuaries and underwriters at Western & Southern. In other words, the computer licensed to operate TurboExcel was processing and converting files received from other computers, and those files processed and converted were substantially created by other users on other computers in violation of the license agreement.

32.   The license agreement for TurboExcel agreed to by Western & Southern clearly

sets forth restrictions on the use of Savvysoft's single user product on a single computer to

process only files created on that same computer as follows:

> You may not use the Software to engage in a service bureau business[1] or
> similar activities. Savvysoft and its suppliers retain all right, title and interest in
> and to the Software, and any rights not expressly granted to you herein are
> reserved by Savvysoft and its suppliers. You may not copy (except to
> download the Software and make a single back-up or archival copy), distribute,
> sell, rent, lease, loan, modify, create derivative works, adapt, translate,
> perform, display, sublicense, transfer or otherwise distribute the Software on a
> standalone basis or as part of a collection, or as part of any product or service
> for resale. ***You may not have multiple computers or terminals connected
> (directly or indirectly) to the licensed computer in order to allow more than
> one computer to run the Software. You may not operate the licensed
> computer to cause the Software to process files received from other
> computers, and the licensed computer can only process files that were
> substantially created on the licensed computer.***

See Exhibit 2.

33.   The license agreement for TurboExcel agreed to by Western & Southern also

clearly sets forth restrictions on the distribution of files generated by Savvysoft's product

("Generated Files"), as well as files shipped with Savvysoft's product ("Runtime Files"), as

follows:

> The Software generates files based on the licensed user's spreadsheets
> ("Generated files"). The Software also contains run-time files ("Runtime
> Files") which are used in conjunction with Generated Files created by the
> Software. These Runtime Files consist of, among other things, routines for
> emulating the functions contained within Microsoft Excel. Other than for use
> with the Software, and use with the Generated Files, you may not use the
> Runtime Files with any other software application nor use the Runtime Files as
> part of any process or system that is used to automatically deliver, share, or
> distribute files or other work created using the Runtime files. You may not use

---

[1] A service bureau is a company that provides business services for a fee. The term has been extensively used to describe technology-based services to financial services companies, particularly banks and insurance companies. https://en.wikipedia.org/wiki/Service_bureau

SRIPLAW

CALIFORNIA ♦ GEORGIA ♦ FLORIDA ♦ TENNESSEE ♦ NEW YORK

the Runtime Files to distribute, sell, rent, lease, loan, modify, create derivative works, adapt, translate, perform, display, sublicense, transfer or otherwise distribute files on a standalone basis or as part of a collection, or as part of any product or service for resale, except as the Runtime Files are used directly by the Generated Files (however, the distributed Generated Files may not simply perform computations which are substantially identical to one or more of the functions in the Runtime Files). ***In no event may the Runtime Files be distributed without a valid copy of the Generated Files.*** The Generated Files may only be validly distributed with a valid license for distribution, which license is only granted to licensees of the Enterprise Edition of the Software and the Server Edition of the Software.

See Exhibit 2.

34.   Western & Southern's use of Savvysoft's TurboExcel product violated the terms of the TurboExcel license agreement, infringed upon Savvysoft's copyright in TurboExcel, and exceeded the limited use of Savvysoft's trade secrets permitted under the circumstances.

35.   Savvysoft advised Western & Southern that its use of Savvysoft's TurboExcel product violated the terms of the TurboExcel license agreement, infringed upon Savvysoft's copyright in TurboExcel, and exceeded the limited use of Savvysoft's trade secrets permitted under the circumstances.

36.   As a result, SavvySoft refused to provide Western & Southern with an updated license key for TurboExcel unless Western & Southern paid SavvySoft for the unlicensed use of its software. Western & Southern refused and continued to use and distribute the Runtime Files generated by TurboExcel without a valid copy of the Generated Files as part of the Western & Southern Quote System.

37.   Western & Southern's continued use and distribution of the Runtime Files generated by TurboExcel without a valid copy of the Generated Files as part of the Western & Southern Quote System constituted a further violation of the terms of the TurboExcel license

agreement, infringed upon Savvysoft's copyright in TurboExcel, and exceeded the limited use of Savvysoft's trade secrets permitted under the circumstances.

39.   Western & Southern copied and distributed Savvysoft's copyrighted software in connection with Western & Southern's business for purposes of promoting Western & Southern's business, and in the course and scope of advertising, pricing, promoting and selling products and services.

COUNT I
DIRECT COPYRIGHT INFRINGEMENT

40.   Savvysoft incorporates the allegations of paragraphs 1 through 39 of this Complaint as if fully set forth herein.

42.   Savvysoft owns a valid copyright in the Work at issue in this case.

43.   Savvysoft registered the Work at issue in this case with the Register of Copyrights pursuant to 17 U.S.C. § 411(a).

44.   Western & Southern copied and distributed and created derivative works of the Work at issue in this case and made derivatives of the Work without Savvysoft's authorization in violation of 17 U.S.C. § 501.

45.   Western & Southern performed the acts alleged in the course and scope of its business activities.

46.   Western & Southern's acts were willful.

47.   Savvysoft has been damaged.

48.   The harm caused to Savvysoft has been irreparable.

COUNT II
INDIRECT COPYRIGHT INFRINGEMENT

49.   Savvysoft incorporates the allegations of paragraphs 1 through 39 of this Complaint as if fully set forth herein.

50.   Savvysoft owns valid copyrights in the Work at issue.

51.   Savvysoft registered the Work with the Register of Copyrights pursuant to 17 U.S.C. § 411(a).

52.   Western & Southern employees copied, used, made available, distributed and made derivative works of the Work without Savvysoft's authorization in violation of 17 U.S.C. § 501.

53.   Western & Southern knew or should have known about the infringement by its employees, was entitled to control or regulate that infringement, and profited from it.

54.   Savvysoft has been damaged.

55.   The harm caused to Savvysoft has been irreparable.

COUNT III
VIOLATION OF THE ECONOMIC ESPIONAGE ACT OF 1996 AS AMENDED BY THE FEDERAL DEFEND TRADE SECRETS ACT OF 2016

56.   Plaintiff Savvysoft incorporates the allegations of Paragraphs 1 through 39 of this Complaint as if fully set forth herein

57.   TurboExcel is a trade secret of Savvysoft as defined in 18 U.S.C. § 1839.

58.   Western & Southern used TurboExcel in interstate commerce without the express or implied consent of Savvysoft under circumstances giving rise to a duty to limit the use of the trade secret.

59.   Savvysoft has been damaged.

60.   The harm caused to Savvysoft has been irreparable.

COUNT IV
VIOLATION OF THE OHIO UNIFORM TRADE SECRETS ACT

61.   Plaintiff Savvysoft incorporates the allegations of Paragraphs 1 through 39 of this Complaint as if fully set forth herein

62.   TurboExcel is a trade secret of Savvysoft as defined in Ohio Rev. Code § 1333.61.

63.   Western & Southern used TurboExcel without the express or implied consent of Savvysoft under circumstances giving rise to a duty to limit the use of the trade secret.

64.   Savvysoft has been damaged.

COUNT V
BREACH OF CONTRACT

65.   Savvysoft incorporates the allegations of paragraphs 1 through 39 of this Complaint as if fully set forth herein.

66.   The agreement between the parties provides for the application of New York law.

67.   Western & Southern breached the licensing agreement between the parties by committing the acts described herein.

68.   Savvysoft has been damaged.

WHEREFORE, the Plaintiff Options Unlimited Research Corp. prays for judgment against the Defendant Western & Southern Financial Group, Inc. that:

a.   Defendant and its officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, be preliminarily and permanently enjoined from committing the acts alleged herein in violation of 17 U.S.C. § 501, 18 U.S.C. § 1836(b), and Ohio Rev. Code § 1333.62;

b.   Defendant be required to pay Plaintiff its actual damages and Western & Southern's profits attributable to the infringement, or, at Plaintiff's election, statutory damages, as provided in 17 U.S.C. § 504;

c.   Direct defendant to account for all employees and agents that are using TurboExcel, and to account for all monies earned by defendant from the use of TurboExcel;

d.   Award plaintiff actual damages in an amount to be proved at trial and/or as otherwise provided by law;

e.   Order an accounting by defendant of any profits derived in any way from defendant's wrongful acts;

f.   Enter an order/judgment for the disgorgement of any profits of defendant that are attributable to defendant's infringement, or trade secrets theft not taken into account by an award of actual damages, including in particular but without limitation, the value of all gains, profits, advantages, benefits and consideration derived by defendant since the beginning of their infringement from the sales of their products and services;

g.   Award plaintiff prejudgment interest;

h.   Award plaintiff its reasonable attorney fees and costs of suit incurred herein pursuant to the applicable statutes;

i.   Award plaintiff exemplary damages two times the amount of compensatory damages for the willful and malicious misappropriation of plaintiff's trade secrets; and

j.   Plaintiff be awarded such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

DATED: March 20, 2021   Respectfully submitted,

                                         /s/ John D. Gigliotta
                                         JOHN D. GIGLIOTTA
                                         johng@inventorshelp.com

                                         GUGLIOTTA & GUGLIOTTA, LPA
                                         55 South Miller Road
                                         Suite 203
                                         Akron, OH 44301
                                         330.253.2225 – Telephone
                                         330.253.6658 – Facsimile
                                         Counsel for Plaintiff Options Unlimited Research Corp.

                                         and

                                         JOEL B. ROTHMAN
                                         (pro hac vice forthcoming)
                                         Joel.rothman@sriplaw.com
                                         SRIPLAW
                                         21301 Powerline Road, Ste 100
                                         Boca Raton, FL 33433
                                         561.404.4335 – Telephone
                                         561.404.4353 – Facsimile

                                         Counsel for Plaintiff Options Unlimited Research Corp.